

GAO

United States General Accounting Office

Report to the Co-Chairs of the
Congressional Caucus for Women's
Issues

December 1993

LEGISLATIVE EMPLOYMENT

Operations of the Office of Fair Employment Practices Could Be Improved





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-253527

December 9, 1993

The Honorable Patricia Schroeder, Co-Chair
The Honorable Olympia Snowe, Co-Chair
Congressional Caucus for Women's Issues
United States Congress

On May 27, 1993, we testified on equal employment opportunity (EEO) complaint processing by the House of Representatives' Office of Fair Employment Practices (OFEP) before the Joint Committee on the Organization of Congress.¹ During the testimony, we presented a comparison of OFEP's, the Equal Employment Opportunity Commission's (EEOC), and the U.S. Senate's complaint processes. We also presented information on the number of inquiries and complaints OFEP had received since it began operations.

Following the testimony, your staff asked if we could make any recommendations on how OFEP's operations, which fall under the administrative direction of the Clerk of the House, could be improved. This report responds to that request. Specifically, we examined OFEP's procedures for (1) educating House employees and employers about their EEO rights and responsibilities, (2) handling inquiries and complaints about alleged violations of fair employment practices and fair labor standards, and (3) carrying out hearings.

Results in Brief

Although the House has experienced an average turnover of 25 percent of its employees each year since OFEP was established in 1988, OFEP has not implemented a program to ensure that employees and employing offices are routinely made aware of employees' rights and the office established to enforce these rights. Unlike its Senate counterpart, OFEP has not been legislatively mandated to implement programs designed to heighten awareness of employees' rights in order to prevent violations from occurring. This lack of a statutory mandate or House rule could have contributed to OFEP's limited educational activities.

At the end of July 1993, OFEP had received 1,407 inquiries in the almost 5-year period since it began operations. However, it has not collected data on the specific nature of the information requested or the concerns expressed. By collecting more specific data on the nature of the inquiries, OFEP could target its educational efforts to address those areas that are the

¹EEO Complaint Processing by the House Office of Fair Employment Practices (GAO/T-GGD-93-30, May 27, 1993).

subject of the largest number of questions and concerns. In addition, collecting more specific data on employees' concerns about fair employment practices and fair labor standards could help OFEP anticipate its potential complaint workload.

OFEP's hearing procedures could be strengthened by (1) barring the appointment of House employees or officers as hearing officers and (2) requiring that hearing officers have knowledge of the various EEO and civil rights laws.

Also, the House rule that establishes OFEP's procedures for addressing employees' grievances does not cover Architect of the Capitol (AOC) employees who work for the House. We believe that the House should consider revising the rule so that these employees could have their complaints addressed in a manner similar to Architect employees who work for the Senate.

Background

OFEP, which began operations in November 1988, was established to carry out the functions assigned under the Fair Employment Practices Resolution (H.R. 558). The resolution, which was adopted by the House on October 4, 1988, was later incorporated into the rules of the House as Rule 51, effective January 3, 1991. To carry out the functions assigned under this resolution, the Committee on House Administration authorized OFEP four permanent positions—director, counselor, mediator, and secretary. These positions are currently filled by individuals who, according to Rule 51, are appointed by the Chairman and Ranking Minority Member of the Committee on House Administration. Rule 51 also places OFEP's staff and operations under the administrative direction of the Clerk of the House.

The functions assigned to OFEP consist of considering alleged violations of section 2 of Rule 51 and alleged violations of the Fair Labor Standards Act (FLSA). Section 2 of Rule 51 prohibits discrimination in personnel actions on the basis of race, color, national origin, religion, sex (including marital or parental status), disability, or age. The protections afforded under Rule 51 apply to employment positions paid by the Clerk of the House or other official designated by the House, such as staff employed in Member and committee offices. The protections also apply to any employment positions in a legislative service organization or other entity paid through funds from the clerk-hire allowance.² FLSA provides standards for the

²The clerk-hire allowance is an annual sum of money provided to each Member for the employment of staff in his or her Washington, D.C., congressional office and district office(s).

payment of minimum wages and overtime compensation. FLSA was amended by the Equal Pay Act of 1963 to also prohibit discrimination on the basis of sex in the payment of wages for the performance of equal work in the same office.

In considering alleged violations of section 2 of Rule 51 and of FLSA, OFEP is to use the three-step process outlined in section 3 of Rule 51. The three-step process consists of (1) counseling and mediation; (2) formal complaint, hearing, and OFEP review; and (3) final review by an eight-member review panel.³ The maximum time it takes to complete all three steps of the process is 7 to 8 months, according to OFEP's Director. OFEP does not investigate complaints because it is not authorized to do so under the procedures established under Rule 51.

OFEP's activities since November 1988 have included responding to inquiries, processing complaints, disseminating notices about its complaint procedures, and monitoring the progress of legislation⁴ introduced in Congress that would provide House employees with certain rights and protections and require enforcement by OFEP. During the period January 1989 through July 1993, OFEP received 1,407 inquiries. According to its Director, the inquiries were from individuals who asked about OFEP's process and/or expressed a specific concern about fair employment practices or fair labor standards. Also during that period, OFEP received 30 informal complaints of alleged violations of fair employment practices and 2 informal complaints alleging a fair labor standard violation; 12 of the informal complaints resulted in formal complaints.

Scope and Methodology

To respond to your request for us to recommend how OFEP's operations could be improved, we examined OFEP's procedures for (1) educating House employees and employing offices about their EEO rights and responsibilities and (2) handling inquiries and complaints about alleged violations of fair employment practices and fair labor standards. We also examined the qualification requirements for the hearing officer position and procedures for selecting hearing officers and apprising complainants

³The eight-member review panel is formed at the beginning of each Congress and is composed of (1) two elected officers or employees of the House, appointed by the Speaker of the House; (2) two employees of the House appointed by the minority leader of the House; and (3) four members of the Committee on House Administration, two appointed by that Committee's chairman and two appointed by that Committee's ranking minority party member. Of the two Committee on House Administration members appointed to the panel by that Committee's chairman, one is also appointed to be chairman of the review panel.

⁴The legislation included an amendment in 1989 to the FLSA, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, and the Family and Medical Leave Act of 1993.

and respondents about their responsibilities in the hearing process. These issues arose during our analysis of OFEP's handling of complaint processing but could not be fully assessed in the time period prior to our testimony.⁵ Appendix I presents the details of our approach in examining OFEP's procedures.

The Clerk of the House provided us written comments on a draft of this report by letter dated October 6, 1993. His comments and our evaluation of them are presented in appendix II and elsewhere in this report, as appropriate. The OFEP Director informally provided some technical comments, which were incorporated as appropriate.

We did our work from March 1993 to July 1993 in Washington, D.C., in accordance with generally accepted government auditing standards.

OFEP's Educational and Promotional Activities Could Be Expanded

In the nearly 5 years since OFEP began operations in November 1988, its educational and promotional activities have consisted of disseminating information about its existence, employees' rights, and the process for enforcing these rights. However, OFEP has not routinely disseminated this information each year since it began operations in 1988 even though the House has experienced an average employee turnover rate of 25 percent annually, according to House Finance Office data.

Some Educational Efforts Have Been Initiated

During 1989 through 1992, employees and employing offices did not regularly receive information about OFEP, employees' rights and protections, employing offices' responsibilities to administer these rights and protections and to ensure that employees are aware of them, and OFEP's process for enforcing them. In 1992, for example, information was not generally disseminated to employees or employing offices, and the information disseminated in 1990 consisted of (1) a March 14, 1990, memorandum sent to employing offices from the Clerk of the House's office asking employers to circulate and post the memorandum announcing OFEP's new location and (2) a September 28, 1990, letter from the Committee on House Administration's Chairman and Ranking Minority Member to employing offices advising them that FLSA was applicable to House employers and employees effective October 1, 1990, and that employees could submit a claim to OFEP. Also in 1990, the OFEP Director provided information about OFEP to the Committee on House Administration for inclusion in the U.S. House of Representatives

⁵GAO/T-GGD-93-30, May 27, 1993.

Congressional Handbook. As we discuss later, the information was not incorporated into the congressional handbook.

In contrast, the information disseminated in 1993 was more extensive. In late April 1993, OFEP initiated general distribution of its fact sheet, which described House employees' rights and protections under the various EEO and civil rights laws and OFEP's process for handling complaints. Copies of the fact sheet were provided to (1) the Finance Office for inclusion in new employees' payroll and benefits information packets, (2) House offices for posting, and (3) current employees at either their home or work address. Prior to April 1993, there was no general distribution of the fact sheet, according to OFEP's Director. OFEP only provided it on a request basis.

In the letter transmitting the fact sheet to employing offices, the Clerk of the House said "it is your responsibility to ensure that your employees are adequately informed of the applicable employment 'rights and protections' under which they are covered." He also said that to ensure effective, ongoing dissemination of this information, the fact sheet should be (1) posted on a continuing basis and in an easily accessible and central location within their offices and (2) sent to all of their offices, including any district or subcommittee offices.

According to OFEP's Director, the number of complaints received by the office increased significantly after the fact sheet was disseminated in late April 1993. OFEP's data showed that 16 informal complaints were received during the period April 1993 through July 1993—5 in May, 2 in June, and 9 in July. The number of informal complaints that OFEP received during this 4-month period equaled the number of complaints that we reported it had received in the 4-year period prior to April 1993.

In addition to providing information about OFEP and its complaint process directly to employees and employing offices, OFEP's Director provided this information to the Committee on House Administration in 1989, 1990, and 1993 for inclusion in the U.S. House of Representatives Congressional Handbook and to the Clerk of the House in 1991 for inclusion in his operational handbook. However, the OFEP information was not incorporated into the congressional handbook until 1993 because the handbook was not reissued in 1990 as planned, according to a Committee on House Administration official. Instead, the OFEP information was incorporated into the 1990 and the 1992 editions of the New Members' Orientation Handbook.

Since the OFEP information was incorporated into the new Members' handbook rather than the congressional handbook, employees may not have had as much access to the information because of the limited distribution of the new Members' handbook compared to the congressional handbook. According to the House Administration Committee official, the congressional handbook normally is reissued every 5 years to various congressional entities and individuals, including Members, House committees, and administrative support offices. The new Members' handbook is issued every 2 years to each new Member who, according to the House committee official, has the prerogative to share the employee information section with his or her staff.

Activities Could Be Expanded to Include EEO Awareness Training and Mandatory Posting of Information on the House's EEO Program

OFEP's educational and promotional activities differ from those of the Senate fair employment office in that its activities do not include providing formal training to employees and employing offices to make them aware of House employees' rights and protections and how to avoid violating these rights. Unlike the Senate office, OFEP does not have a mandate to carry out such activities. Section 303(a)(2) of the Civil Rights Act of 1991 requires the Senate fair employment office to "implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring." According to the Senate fair employment office's Deputy Director, his office interprets this provision of the act as a broad mandate to do a wide range of training and to provide advice to offices. He also said that the Senate fair employment office spends the vast majority of its time meeting this requirement by educating employees, Members, and committee offices about the functions of their office and about employees' rights.

The Senate fair employment office's activities have included providing Senate-wide and office-specific training, showing a videotape on sexual harassment, and communicating with Senate office representatives, according to its Deputy Director. In addition, he said that they have issued various publications. These publications provide guidance to offices about particular issues, describe the discrimination complaint process, and explain the roles and responsibilities of the Senate fair employment office and of the employing offices.

We noted that although the Clerk of the House advised employing offices in April 1993 to post on a continuing basis OFEP's fact sheet that describes employees' rights and the complaint process, neither he nor the OFEP

Director can require them to do so as EEOC can require of executive branch agencies. Rule 51 does not specifically give them this authority.

EEOC's regulations require each executive branch agency to

- prominently post throughout the workplace written materials that describe the agencies' EEO programs and the administrative and judicial remedial procedures available to its employees;
- publicize to all employees and post at all times the names, business addresses, and business telephone numbers of the EEO counselors; and
- post a notice of the time limits and necessity of contacting a counselor before filing a complaint.

Additional information regarding the need for educational and promotional activities was provided in a September 15, 1993, report prepared by the Congressional Management Foundation for the Joint Committee on the Organization of Congress. The survey was administered to 3,500 randomly selected Senate and House employees, of which 1,422 responded to it.

The survey asked employees to indicate for their respective fair employment office if they knew the office was available to them and how they learned about it. It also asked employees to describe the degree of their understanding of the office's mission and services. Although the Foundation's report indicated that 81 percent of the House employees who responded to the survey said they were aware of OFEP, only 22 percent said they had a good understanding of OFEP's mission, and 14 percent said they had a good understanding of its services.

OFEP Could Maintain More Specific Data on the Nature of the Inquiries It Receives

As previously discussed, OFEP received 1,407 inquiries during the period January 1, 1989, through July 31, 1993, from individuals who, according to its Director, asked about OFEP's process and/or expressed a specific concern about fair employment practices or fair labor standards. The OFEP Director estimated that 80 to 90 percent of the inquiries were from employees, and the remaining 10 to 20 percent were from supervisors or managers of employing offices. OFEP's records showed that about one-half of these inquiries (684) were requests for information only, and about one-third (453) of the inquiries included individuals expressing a specific concern that either related to a fair employment practice or FLSA. The remaining 270 inquiries were either from individuals who were not eligible to use OFEP's services or involved issues that are not addressed by OFEP.

OFEP recorded the nature of the inquiries under broad categories entitled "information only," "information and appointment," "information/specific concern," and "non-OFEP employee concern or non-eligible employee." According to the OFEP Director, the "information and appointment" and "information/specific concern" categories both mean that an individual expressed a specific concern about a fair employment practice or fair labor standard. However, he said these categories are tracked separately because he believes that individuals requesting an appointment appear to have a greater sense of urgency to further address their concerns when initiating contact. The "non-OFEP employee concern or non-eligible employee" category included inquiries about issues that are not addressed by OFEP and inquiries from individuals who were not eligible to use OFEP's services.

OFEP's inquiry records do not include any data on (1) who made the inquiries, (2) the specific nature of the concerns expressed during these inquiries, (3) what information was requested, (4) whether individuals kept the appointments that were set up to discuss a specific concern, and (5) the outcome of discussions with individuals about their concerns.

Data on who made the inquiries would be useful to OFEP in accurately and completely accounting for the number of inquiries it receives. Because OFEP does not obtain this data, it would be difficult for it to know the extent to which it may be double counting individuals who may contact it more than once asking for the same information or expressing the same concern.

Maintaining data on the specific nature of the concerns expressed and of the information requested during these inquiries could help OFEP anticipate its potential complaint workload and determine the extent to which employees were requesting information about their rights and OFEP's procedures. OFEP also could use this data to target its educational efforts and possibly prevent violations from occurring.

Data on the number of appointments made and kept to discuss specific concerns and on the outcome of discussions with individuals about these concerns could help provide insight into why so few complaints result from the inquiries. OFEP records did not provide any indication as to why inquiries did not result in complaints.

OFEP's Hearing Procedures Could Be Strengthened

OFEP's hearing procedures could be strengthened by (1) requiring that formal complaints be reviewed by individuals who are not House employees, (2) requiring prospective hearing officers to have knowledge of EEO and civil rights laws, and (3) clearly communicating the burden of proof requirements.

Provide for Independent Hearing Officers

Rule 51 requires that hearing officers be appointed by the Chairman and the Ranking Minority Member of the Committee on House Administration. It further requires that hearing officers come under the administrative direction of the Clerk of the House.⁶ However, it does not prohibit the appointment of House employees as hearing officers. Because there is no requirement barring the appointment of House employees, the Committee's Chairman and Ranking Minority Member have the latitude to appoint individuals who are or are not House employees. As of August 2, 1993, only House employees had been appointed as hearing officers.⁷ Since Rule 51 allows the appointment of House employees as hearing officers, they could be perceived by complainants and respondents as lacking independence.

In contrast, the director of the Senate fair employment office is prohibited by the Civil Rights Act of 1991 from using Senators or Senate officers or employees as hearing officers. According to section 307(b) of the act, the Senate fair employment office director is required to choose three independent hearing officers, who are not Senators or officers or employees, to consider each complaint. In selecting these officers, the director considers individuals who are recommended by the Federal Mediation and Conciliation Service, the Administrative Conference of the United States, or organizations composed primarily of individuals experienced in adjudicating or arbitrating personnel matters.

We also noted that EEOC's regulations allow for an independent review of executive branch employees' complaints. According to their regulations, a complainant may request a hearing by an EEOC administrative judge at the conclusion of his or her agency's investigation of the complaint.

⁶OFEP's Director said that the administrative direction provided by the Clerk of the House to hearing officers includes providing whatever resources they need, such as space, supplies, or equipment, to perform their function. He further said that if individuals who are not House employees are appointed as hearing officers, they would receive the same administrative direction as House employees, but would not become House employees.

⁷Since November 1988, two House employees have been appointed to hear a total of four discrimination complaints. Both of these individuals are attorneys. One is employed in the office of the Clerk of the House, and the other is a House subcommittee employee.

Require OFEP's Hearing Officers to Have Knowledge of EEO Laws

The qualification requirements for OFEP's hearing officer position consist of six criteria. These requirements are not specified in Rule 51. Instead, they are contained in a document developed in 1992, 4 years after OFEP had been established. OFEP developed the document in consultation with the Committee on House Administration staff and the hearing officers who had presided over four cases that had gone through the hearing process as of August 1992.

Three of the six criteria for the hearing officer position are minimum requirements that all applicants must meet. To meet the minimum requirements, an individual must have

- graduated from an American Bar Association accredited law school and be an attorney who currently is admitted to practice law in one of the 50 United States for a minimum of 5 years,
- demonstrated ability to analyze complex legal issues and experience in conveying such analysis in effective legal writing, and
- judicial temperament and experience in promoting settlements.

Individuals considered for the hearing officer position are not required to meet all of the remaining three criteria. These criteria require them to have "substantial and significant knowledge and/or experience in one or more of the following:"

- title VII of the Civil Rights Act of 1964, the Fair Labor Standards Act, Americans with Disabilities Act, Age Discrimination in Employment Act, and/or other specific employment statutes, their amendments as well as regulatory and case law results;
- litigation and/or administrative hearings; or
- the Federal Rules of Evidence and Civil Procedure.

Since prospective hearing officers are not required to have knowledge and/or experience in all three of the above areas, they could qualify for and be selected for the hearing officer position without any knowledge and/or experience in the various EEO and civil rights laws. For example, an individual who meets the minimum requirements could qualify for and be selected for the hearing officer position based on having knowledge and/or experience in federal rules of evidence and civil procedure and yet not have any knowledge and/or experience in EEO and civil rights laws.

The Senate fair employment office's and EEOC's qualification requirements for hearing officers appear to be more stringent than OFEP's. For example,

the Senate and EEOC require applicants to have knowledge of various EEO laws, whereas OFEP gives them the option of having knowledge of these laws.

Clearly Communicate Burden of Proof Requirements

OFEP provides complainants and respondents a copy of its hearing procedures, according to its Director. The procedures, in part, discuss filing a complaint, requesting a hearing, certain rights that can be exercised by respondents and complainants prior to the hearing date, exchanging of witness lists, powers of the OFEP hearing officer, and burden of proving discrimination.

OFEP recently revised its hearing procedures, effective April 1, 1993. In comparing the revised procedures to those that were in effect prior to April 1, 1993, we noted that the revised section on burden of proof did not clearly communicate who had the burden of proving that discrimination occurred. Prior to April 1, 1993, section h of OFEP's hearing procedures stated that "The burden of proving a violation of section 2 of H. Res. 558 is on the Complainant." OFEP revised its procedures in April 1993 to state the following:

"The burden of proving a violation under Rule 51 shall be governed by principles of current law, as generally applicable to employment. Except as otherwise provided by law, the proponent of evidence, a motion or other matter has the burden of proof."

According to OFEP's Director and Mediator/Attorney, the burden of proof language was revised because they were concerned that the previous language did not accurately reflect the current principles of law. They said that the previous language gave the erroneous impression that the complainant had the entire burden of proving that discrimination occurred and that the respondent had no responsibility in this area.

We believed that the revised language did not clearly communicate who had the burden of proof. We also believed that for complainants who were not represented by counsel, this ambiguity might result in their not adequately preparing their case. We discussed the ambiguity of the language with the OFEP Director. He acknowledged that it could be further clarified and asked us to provide some language that clearly conveyed the burden of proof requirements. In August 1993, we suggested that the following language be incorporated into OFEP's hearing procedures.

"The complainant has the initial burden of proving by a preponderance of the evidence that his or her rights were violated. The respondent, in turn, must present evidence that refutes the complainant's claim. The complainant, however, has the ultimate burden of proving a violation under Rule 51."

In commenting on a draft of this report, the Clerk of the House said that OFEP had incorporated our suggested language into its hearing procedures.

OFEP's Services Should Be Made Available to Architect of the Capitol Employees Who Work for the House

About 800 AOC employees who work in the House office buildings and garages cannot file a complaint with OFEP because they do not fall under Rule 51 definition of covered employees. They also cannot receive the remedies that are available to House employees under Rule 51. House Rule 51 defines covered employees as those individuals in employment positions paid by the Clerk of the House and in any position in a legislative service organization or other entity that is paid through funds derived from the clerk-hire allowance. AOC employees are paid by the Architect.

When AOC employees who work for the House believe that they have been discriminated against, they have to contact an internal office established by AOC. In February 1993, AOC established a fair employment practices office to deal with discrimination complaints and other personnel matters within the agency. As of late August 1993, this office had not established any formal operating procedures.

The procedures for AOC employees who work for the Senate differ from those established for AOC employees who work for the House. The Civil Rights Act of 1991 allows AOC employees who are assigned to the Senate office buildings and restaurants to file a complaint with the Senate fair employment office. The act also allows the Senate fair employment office director to refer AOC employees to the AOC for resolution of their complaints through that office's internal grievance procedures.

It appears to us that AOC employees who work for the House should be allowed to use OFEP's services and that they should be given the right to have their complaints addressed in a manner similar to that provided to AOC employees who work for the Senate.

Recent Legislative Proposals Could Affect OFEP's Operations

Two bills were introduced in the House in August 1993 that could affect OFEP's operations if enacted into law. One bill, H.R. 2846, which was introduced August 3, 1993, proposes changing how Congress handles employment discrimination complaints. The other bill, H.R. 2829, which was introduced August 2, 1993, proposes requiring all employers to post information that informs employees of their protection against sexual harassment and to provide this information to employees individually.

House Resolution 2846, known as the "Congressional Employees Fairness Act," proposes, in part, creating an Independent Office of Compliance that would be governed by a 15-member board of directors. This new office would subsume both the House and the Senate Offices of Fair Employment Practices, and its duties would include handling employment discrimination complaints and educating Members and employees about their rights and responsibilities.

House Resolution 2829, known as the "Sexual Harassment Prevention Act of 1993," proposes requiring all employers, including the House and the Senate, to continually and conspicuously post a notice of information related to sexual harassment that would be prepared or approved by EEOC. The notice must

- define sexual harassment and explain that it is a violation of title VII of the Civil Rights Act of 1964,
- describe how and when to file a complaint alleging sexual harassment with EEOC or the appropriate state or local fair employment agency,
- provide an address and the toll-free telephone number for contacting EEOC about sexual harassment or compliance with the Sexual Harassment Prevention Act, and
- contain any other information that EEOC may require.

Employers also would be required to provide annually a separate notice to each employee that contains (1) the information cited in the employers' notice, (2) a description of their procedures for resolving sexual harassment allegations, and (3) any other information required by EEOC.

As regards to the House, H.R. 2829 proposes that the above-mentioned requirements be enforced in the manner described in section 117(a)(2)(B) of the Civil Rights Act of 1991. This section of the act requires that the procedures established under H.R. 558 be applied in administering the Civil Rights Act. The procedures established under that resolution are

enforced by OFEP. Thus, if H.R. 2829 is enacted, OFEP also would be responsible for enforcing its provisions.

Conclusions

The legislative proposals discussed above could significantly affect OFEP's operations if they are enacted into law. But until these proposals become law, we believe that OFEP should use its discretionary authority to improve its educational program and handling of inquiries. OFEP's efforts to help ensure awareness about employees' rights, employers' responsibilities, and its role in enforcing these rights have been limited when compared to the Senate fair employment office's activities and the requirements EEOC places on executive branch agencies. Since OFEP was established in 1988, it has not routinely disseminated information to employees and employers or provided formal training to further educate them about their rights and responsibilities. Also, although OFEP has received numerous inquiries, it has not collected data that describe who made them, the specific nature of the concerns or requests, and the outcomes of discussions about the concerns.

We also believe that OFEP could strengthen its hearing procedures. The process for appointing hearing officers, as outlined in Rule 51, does not bar the appointment of House employees or officers as hearing officers. The appointment of House employees as hearing officers may deter employees from initiating complaints if they believe that the officers may lack independence and would not be impartial. In addition, OFEP's hearing procedures do not require that hearing officers have knowledge of the various EEO and civil rights laws.

Rule 51, which establishes the procedures for addressing House employees' grievances, does not cover AOC employees who work for the House. Because AOC employees who work for the House are paid by the Architect rather than the Clerk of the House, they cannot use OFEP's services. We believe that AOC employees who work for the House should be afforded the right to have their complaints addressed in a manner similar to that provided to AOC employees who work for the Senate.

Recommendations

We recommend that the Director of OFEP develop and implement an educational program that includes providing formal EEO awareness training and ensures consistent publicity about its office. OFEP's program could be implemented in a manner similar to the Senate's and should continue to include disseminating information on its procedures for

processing and resolving discrimination complaints; House Rule 51, which prohibits discrimination; and the EEO rights and responsibilities of employees and employers.

To assist OFEP in targeting its educational efforts, anticipating its complaint workload, and maintaining an accurate recordkeeping system, we recommend that the OFEP Director collect and maintain more specific data on the inquiries it receives. At a minimum, such data should include:

- who made the inquiries,
- a description of the specific nature of the concerns expressed and of the information requested, and
- information on whether individuals kept the appointments that were set up to discuss a specific concern and on the outcome of discussions with individuals about their concerns.

We also recommend that the Director of OFEP strengthen OFEP's hearing procedures by taking the necessary steps for changing the criteria for the hearing officer position to include a requirement that individuals selected for this position have knowledge of the various EEO and civil rights laws.

Matters for Congressional Consideration

The House may wish to consider revising Rule 51 to require that OFEP maintain an ongoing, consistent educational program. Consideration should also be given to revising Rule 51 to specifically require that employing offices post the fact sheet that describes employees' rights and OFEP's complaint process.

To strengthen OFEP's hearing procedures and eliminate a possible deterrence to participation in the process, the House may wish to consider revising Rule 51 to require selection of hearing officers who are not Members, employees, or officers of the House. Also, to allow AOC employees who work for the House the same rights as their Senate counterparts, the House may wish to consider revising the Rule 51 definition of covered employees to include those AOC employees who work in the House buildings and garages.

Agency Comments and Our Evaluation

In an October 6, 1993, letter, the Clerk of the House commented on a draft of this report. His comments are summarized below and are presented in their entirety in appendix II.

We proposed four recommendations to the Director of OFEP. Our first recommendation was that OFEP expand its educational activities to include providing formal EEO awareness training. In responding to this recommendation, the Clerk of the House said that OFEP will continue disseminating information, such as OFEP's fact sheet, to House employees. However, he did not say whether his office and OFEP's Director agreed to expand OFEP's educational activities. His comments appeared to indicate that until they received further policy direction from the House in the form of a written mandate that specifically prescribed what educational activities are to be carried out, they would continue their current educational activities.

We believe it would be beneficial for the House to mandate that OFEP provide an ongoing, consistent educational program to help ensure that such a program would continue to be provided if staffing changes were to occur within OFEP. We do not believe that it needs to mandate what specific educational activities are to be carried out by OFEP. As we stated in our conclusions, we believe that OFEP's Director has the discretionary authority to improve the office's educational program without a legislative mandate.

Regarding our second recommendation to OFEP's Director, the Clerk of the House said that OFEP is pursuing preliminary steps in contacting House support staff to determine the most effective and efficient means of collecting additional data on the nature of the inquiries it receives. However, he noted that OFEP's past actions in collecting data on inquiries were guided by the requirement of confidentiality.

We recognize OFEP's need to maintain confidentiality when collecting the names and specific concerns of individuals who make inquiries. We expect OFEP will follow the same rules of confidentiality that it does in the counseling phase of its discrimination complaint process. During that phase, OFEP collects and maintains in confidence the names and specific concerns of individuals who contact the office for counseling.

We should also point out that collecting certain types of data would not appear to present any significant confidentiality risk. For example, OFEP currently maintains data on the number of inquiries that relate to "information and appointments" but maintains no data on whether appointments were kept or whether individuals' concerns were resolved after the appointments were held. Collecting additional data of this type would not appear to pose any confidentiality problem and could help

explain the apparently large disparity between the number of information and appointment contacts and the number of complaints that are being filed.

In responding to our recommendation that OFEP strengthen its hearing procedures by changing the selection criteria for hearing officers, the Clerk of the House said that since hearing officers are jointly appointed by the Chairman and Ranking Minority Member of the Committee on House Administration, OFEP staff will contact Committee staff regarding our recommendation. It is not clear from his comments whether his office and OFEP believe the selection criteria should be changed to include a requirement that individuals selected for the hearing officer position have knowledge of the various EEO and civil rights laws.

The Clerk of the House also said that OFEP had incorporated into its hearing procedures the language that we suggested for clarifying the burden of proof requirements. Thus, we have deleted this proposed recommendation from the report.

Concerning the matters that we asked Congress to consider, the Clerk of the House said that his office and OFEP await further direction from the Members of the House and its designated oversight committees. He also said the tenor of this report envisions a more proactive OFEP and that directions to assume that role must come from those who established the office and its procedures.

In commenting on our suggestion that the House may wish to consider revising Rule 51 to cover AOC employees who work in House office space, the Clerk of the House said that even though these employees are located in House office space, they do not work under any House employing authority. While this is true, the premise behind our suggestion is that the situation for AOC employees who work in House office space appears to us to be similar to AOC employees who work in Senate office space. As we pointed out in our report, such employees are covered under the Senate fair employment office.

We are providing copies of this report to the Speaker of the House, the Clerk of the House, and the Director of OFEP.

Please call me on (202) 512-2928 if you have any questions concerning this report. Other major contributors to this report are listed in appendix III.

A handwritten signature in black ink, reading "Nancy R. Kingsbury". The signature is written in a cursive style with a large, stylized "N" and "K".

Nancy Kingsbury
Director
Federal Human Resource Management
Issues

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Abbreviations

AOC	Architect of the Capitol
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FLSA	Fair Labor Standards Act
OFEP	Office of Fair Employment Practices

Scope and Methodology

We examined OFEP's procedures for (1) educating House employees and employing offices about their EEO rights and responsibilities, (2) handling inquiries and complaints about alleged violations of fair employment practices and fair labor standards, and (3) selecting hearing officers and apprising complainants and respondents about their responsibilities in the hearing process. In examining these procedures, we interviewed OFEP staff and reviewed various House and OFEP documents.

The House and OFEP documents we reviewed included (1) House Rule 51; (2) various documents on OFEP, its complaint process, and employees' rights that were prepared and disseminated by OFEP, the Clerk of the House, the Chairman and Ranking Minority Member of the Committee on House Administration, and two other congressmen; (3) OFEP's annual reports outlining the office's activities during 1989 through 1992; (4) OFEP's reports on the number and type of inquiries received during January 1989 through July 1993; (5) OFEP's hearing procedures and criteria for selecting hearing officers; (6) and various OFEP forms related to processing complaints and recording inquiries.

Prior to our May 1993 testimony, OFEP's Director had provided us documents that showed information had been disseminated publicizing OFEP's existence and complaint procedures three times—in 1989, 1991, and 1993. In July 1993, the Director provided us additional documents showing some information about OFEP also had been disseminated in 1988 and 1990.

To identify ways in which OFEP could improve its operations, we collected limited data on the Senate Office of Fair Employment Practice's procedures and the EEOC's requirements for educating federal employees and employers about their EEO rights and responsibilities. We then compared these procedures and requirements to those of OFEP. We also compared OFEP's criteria for selecting hearing officers and handling employment discrimination complaints to those of the Senate and EEOC.⁸

We did not assess the adequacy or effectiveness of either the Senate's or EEOC's procedures for educating employees, selecting hearing officers, and handling employment discrimination complaints. Our purpose in comparing the three entities was to note any procedures that could be useful for OFEP to adopt in carrying out its operations.

⁸We testified on the results of our comparison of OFEP's, the Senate's, and EEOC's procedures for handling employment discrimination complaints on May 27, 1993.

Comments From the Clerk of the House

Donald K. Anderson
Clerk

M. Raymond Colby
Deputy Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

October 6, 1993

Ms. Nancy Kingsbury
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Kingsbury,

Thank you for your letter dated September 9, 1993, and the copies of the draft report entitled LEGISLATIVE EMPLOYMENT: Operations of the Office of Fair Employment Practices Could be Improved.

Please find enclosed a copy of my comments on the report. If you have any questions on the comments, please contact William Baranowski, Director of the Office of Fair Employment Practices, on extension 225-0880.

Sincerely yours,



DONNALD K. ANDERSON
U.S. House of Representatives

DKA/wxb/rlm
Enclosure

Appendix II
Comments From the Clerk of the House

Donald R. Anderson
Clerk

W. Raymond Colby
Deputy Clerk

Office of the Clerk
U.S. House of Representatives
Washington, DC 20515-6601

COMMENTS BY THE CLERK OF THE HOUSE
TO GAO REPORT ON THE
OFFICE OF FAIR EMPLOYMENT PRACTICES

I have received the General Accounting Office's (GAO) report on the House Office of Fair Employment Practices (OFEP) and wish to express my appreciation for the opportunity to provide brief comments. Throughout the development of this report, OFEP has maintained consistent contact with your staff and has provided all information and documents that have been requested in the effort to fully apprise all interested parties of OFEP's operations. At the same time, all such information divulged was subject to the strictures of confidentiality maintained to protect those who had exercised their rights through the OFEP process. My comments on the report are made within the context of my responsibility to provide administrative direction to OFEP. Legislative or other suggested changes must be mandated by the House of Representative through the appropriate committees.

First, I believe that OFEP has fully carried out its mandate prescribed under Rule 51 ("Employment Practices") of the Rules of the House of Representatives. Second, the purpose of this report, as stated in its title, is to possibly improve and enhance the existing House discrimination complaint system. In this regard the House must consider whether the current mandate should be modified in light of this review.

Under House Rule 51, OFEP's educational activities have consisted of information dissemination to covered House employees and offices. For example, OFEP and my office, as noted in the report, distributed a copy of the OFEP Fact Sheet to all employees earlier this year and a copy is being included with all "new employee packets" to reach newly hired staff. Similar activity will continue, and future mailings of information such as the OFEP Fact Sheet will occur on a regular basis.

With respect to statistical record-keeping, OFEP is pursuing preliminary steps in contacting House support staff to determine the most effective and efficient means of collecting additional data. OFEP and my office look forward to GAO's assistance and advice on this matter in order to further provide a more detailed tracking system. Again, it is important to note that past OFEP actions have been guided by the essential requirement of confidentiality. There is a great concern that the release of any information that identifies individuals could jeopardize careers and deter others from contacting OFEP.

See discussion on p. 16.

See discussion on pp.
16-17.

Appendix II
Comments From the Clerk of the House

COMMENTS BY THE CLERK OF THE HOUSE
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With respect to the OFEP hearing procedures, the report recommends certain language on the burden of proof requirements. OFEP has incorporated the language developed by GAO concerning such burden of proof requirements. Concerning the criteria for selecting hearing officers, as hearing officers are jointly appointed by the Chairman and Ranking Minority Member of the Committee on House Administration, OFEP staff will be in contact with Committee staff regarding this recommendation.

With respect to all other recommendations, this office and OFEP await further direction from the Members of the House of Representatives and its designated oversight committees. The tenor of the report and the recommendations envision a more pro-active OFEP. Where these recommendations require new policy direction, that direction must come from those who established the office and its procedures. In the role of providing administrative direction, the Office of the Clerk will seek any changed policy direction concerning the recommendations of this report.

The need for policy direction points specifically to the benefit of a written mandate which would strengthen OFEP in addressing these recommendations. For instance, within the text of this report under educational activities, the following is stated: "Unlike the Senate office, OFEP does not have a mandate to carry out such activities. Section 303(a)(2) of the Civil Rights Act of 1991 requires the Senate fair employment office to 'implement programs for the Senate to heighten awareness of employee rights in order to prevent violations from occurring'". Including your recommendations in House Rule 51 would address this issue.

With respect to employees of the Architect of the Capitol, although those recommended for coverage are located in House office space, they do not work under the direction of any employing authority in the House of Representatives. In addition, to increase the range of individuals covered under House Rule 51 will necessitate changes to House Rule 51, and possibly require a further allocation of resources to OFEP.

May I conclude these comments by thanking the GAO, the Congressional Caucus for Women's Issues, the Office of the General Counsel, the employees of OFEP, and all others who contributed to this review. This report and future discussions will assist the Members of the House, the Office of the Clerk, and OFEP in building on the foundation that has been established in providing House staff with employment rights and protections.

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